

#14

PATENT  
Express Mail No. EV127168988US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial Number: 09/492,032  
Filed: January 27, 2000  
Group Art Unit: 3628  
Examiner: William L. Miller  
Applicant: Troy D. Acton, Walter A. Hullemeyer, William F. Neth,  
Roger L. Reuss and Charles F. Winburn  
Title: SEALABLE CASKET HAVING MEMORABILIA  
COMPARTMENT

Cincinnati, Ohio 45202

July 15, 2002

Assistant Commissioner of Patents  
Washington, D.C. 20231

Sir:

BRIEF ON APPEAL

This is an appeal from the decision of the Examiner finally rejecting claims 1-15, 17, 19, 26, 28-31 and 43-47. A copy of these claims appears in the Appendix of this Brief.

Real Party In Interest

This application is assigned to Batesville Services, Inc.

Related Appeals And Interferences

There are no related appeals or interferences.

RECEIVED  
TECHNOLOGY CENTER 3600  
02 JUL 17 AM 10:31

RECEIVED  
STANDARD OF INVENT APPEALS  
AND INTERFERENCES  
02 JUL 16 PM 2:51

### Status Of The Claims

This application originally contained claims 1-27. In a Response dated September 20, 2001, claims 1-6, 10, 15, 18-20, 24, 25 and 27 were amended, and new claims 28-47 were added. In an Official Action dated December 18, 2001, claims 1-15, 17, 19, 26, 28-31 and 43-47 were finally rejected.

### Status of the Amendments

No Amendments have been filed subsequent to the final rejection.

### Summary of the Invention

A sealable casket having a memorabilia compartment comprises a shell and at least one cap pivoted to the shell. The shell and cap have respective confronting flanges. A gasket is disposed between the flanges of the shell and the cap forming a seal therebetween. A memorabilia compartment is formed within the cap and includes an access opening and an interior. A removable cover is positioned over the access opening, and a gasket is disposed between the cover and the cap forming a seal therebetween.

The casket may be a full top casket having a single full length cap, or a cut top casket having a head end cap and a foot end cap. The cover plate is preferably a face plate of a drawer movably mounted in the cap. In the case of cut top caskets, the drawer may be movably mounted in either of the head end and foot end caps, and preferably is movably mounted in the foot end cap. Likewise in the case of cut top

caskets, the casket further comprises a gasket disposed between the head and foot end caps forming a seal therebetween.

When the drawer is movably mounted in the foot end cap, the foot end cap preferably includes a header wall and the access opening is formed in the header wall. The drawer is movable into and out of the foot end cap through the access opening in the header wall. The gasket is positioned against an outside surface of the header wall and around the access opening. A drawer support is mounted within the foot end cap and from an inside surface of the header wall. The drawer support preferably is an open ended generally C-shaped channel. The channel is mounted from the inside surface of the header wall with a pair of brackets, one bracket of the pair being located on each lateral side of the channel. Each bracket preferably has a longer leg and a shorter leg. The longer leg is secured to the channel and the shorter leg is secured to the inside surface of the header wall. Each bracket is preferably generally C-shaped so as to be reversible side-to-side relative to the channel and end-to-end relative to the bracket. The longer leg has an upwardly directed U-shaped tang at a lower edge thereof. A free end of this tang is received in a slot at a lower edge of the channel. A downwardly directed U-shaped clip has one leg received in a slot at an upper edge of the channel. The other leg of the U-shaped clip retains the longer leg of the bracket against a side of the channel.

The drawer is preferably spring biased towards an outward position. To that end, each lateral side of the channel includes a semicircular channel therein, and

each semicircular channel includes a compression spring therein retained at an inward end thereof by a retaining pin. The drawer includes a rail on each lateral side which rides in a respective semicircular channel. Pushing the drawer completely into the channel causes the rails of the drawer to compress the compression springs.

The casket further includes a latch mechanism which latches the drawer in an inward position and compresses the gasket between the face plate of the drawer and the header wall. To that end the latch mechanism preferably includes a cam operable on an inside surface of the header wall which when actuated draws the face plate and header wall toward one another. The cam is preferably actuated by a rotatable element mounted in the face plate of the drawer which when rotated rotates the cam to and between an engaged position whereby the drawer is locked in the cap and a disengaged position whereby the drawer may be withdrawn from the cap. A rubber washer is disposed between the rotatable element and a face plate forming a seal therebetween. The rotatable element is preferably a hex head insert housed within a housing which itself is mounted in the face plate. The housing preferably has a flange on one end and is threaded on the other end. A rubber washer is compressed between the flange and face plate by a nut threaded onto the housing threaded end on an inside surface of the face plate. The hex head insert is threaded and the cam is secured onto the insert threaded end by a nut, the cam and cam nut being positioned inward of the housing nut.

The casket further includes at least one drawer stop operable between the channel and the drawer to prevent the drawer from being completely withdrawn from the channel. In a preferred form, the drawer stop comprises a U-shaped first end which fits over a front upper edge of the channel and a wing extending generally perpendicularly from the U-shaped first end. The wing projects through a slot in an upper portion of the channel such that the wing is in the path of a rear wall of the drawer as the drawer is withdrawn from the channel thereby blocking complete withdrawal of the drawer from the channel.

Various other features and advantages of the invention may be seen with reference to the Detailed Description Of The Invention at pages 7-11.

#### Issues

1. Did the Examiner err in rejecting claims 1-11 and 19 under 35 U.S.C. §103(a) as being unpatentable over Biondo et al U.S. Patent No. 5,727,291, Estes U.S. Patent No. 4,962,574 and Shanks U.S. Patent No. 3,680,941?
2. Did the Examiner err in rejecting claims 12-15 and 26 under 35 U.S.C. §103(a) as being unpatentable over Biondo, Estes, Shanks and Shank U.S. Patent No. 2,937,765?
3. Did the Examiner err in rejecting claim 17 under 35 U.S.C. §103(a) as being unpatentable over Biondo, Estes, Shanks, Shank and Saaf U.S. Patent No. 5,678,289?

4. Did the Examiner err in rejecting claims **28** and 29 under 35 U.S.C. §103(a) as being unpatentable over Biondo et al and Lee U.S. Patent No. 5,152,161?

5. Did the Examiner err in rejecting claims 30 and 31 under 35 U.S.C. §103(a) as being unpatentable over Biondo et al, Lee and Shanks?

6. Did the Examiner err in rejecting claim **43** under 35 U.S.C. §103(a) as being unpatentable over Biondo et al and Snanks?

7. Did the Examiner err in rejecting claims 44 and 45 under 35 U.S.C. §103(a) as being unpatentable over Biondo et al, Shanks and Lee?

8. Did the Examiner err in rejecting claim **46** under 35 U.S.C. §103(a) as being unpatentable over Biondo et al, Saaf and Shanks?

9. Did the Examiner err in rejecting claim 47 under 35 U.S.C. §103(a) as being unpatentable over Biondo et al, Saaf, Shanks and Lee?

#### Grouping Of The Claims

Of the finally rejected claims, claims 1, 28, 43 and 46 are independent claims. Claims 2-15, 17, 19 and 26 depend either directly or indirectly on claim 1. Claims 29-31 depend either directly or indirectly on claim 28. Claims 44 and 45 depend either directly or indirectly on claim 43. Claim 47 depends on claim 46. It is Appellants' position that there are at least eight separately groups of claims. Group I consists of claim 1. Group II consists of claim 28. Group III consists of claim 43. Group IV consists of

claim 46. Group V consists of claims 2-15, 17, 19 and 26. Group VI consists of claims 29-31. Group VII consists of claims 44 and 45. Group VIII consists of claim 47.

Appellants submit that each of these groups of claims are separately patentable from each of the others of the groups of claims for reasons which will be more fully developed below in the Argument.

### Argument

#### Issues 1-3 and 5-9

The error common to all of these Issues is the Examiner's combination of Shanks, for a Food Storage Compartment For A Refrigerator, with, variously, Biondo et al for a Casket Having A Memorabilia Compartment, Estes for a Plural Casket Display and Saaf for a Burial Casket With Music Media Storage And Display. These issues touch on all of the independent claims in the application, namely claims 1, 28, 43 and 46.

Claim 1 claims a sealable casket having a memorabilia compartment, the casket comprising a shell, at least one cap pivoted to the shell, the shell and cap having respective confronting flanges, a first gasket disposed between the flanges of the shell and cap to seal therebetween, a memorabilia compartment formed within the cap and including an access opening and an interior, a removable cover positioned over the access opening and a second gasket disposed between the cover and the cap to seal therebetween.

Claim 28 claims a casket comprising a shell, at least one cap engaging the shell, the cap including a header wall, the header wall being formed to include an access opening, a cover and a cam operable on an inside surface of the header wall which when actuated draws the cover toward the header wall.

Claim 43 claims a casket comprising a shell, at least one cap engaging the shell, the cap including a header wall, the header wall being formed to include an access opening, a cover and a gasket disposed between the cover and the header wall.

Claim 46 claims a casket comprising a shell, at least one cap engaging the shell, a drawer carried by the cap for movement between an inward position and an outward position spaced apart from the inward position, a spring configured to yieldably bias the drawer away from the inward position and a gasket disposed between the drawer and the cap and configured to sealingly engage both of the drawer and the cap at least when the drawer is at the inward position.

The Examiner cited Shanks as teaching “a gasket (33) is positioned between the ‘cap’ (20) and the ‘cover’ (37),” and “a gasket (33) being positioned against an outside surface of ‘header wall’ (29-31) and around the access opening therein thereby providing a seal between the ‘cover’ (37) and ‘cap’ (20).” In actuality, however, element 20 of Shanks is not a “cap” as claimed, but rather is the transparent clear plastic housing of the refrigerator food storage compartment. Nor are elements 29-31 a “header wall” as claimed. The Examiner’s reading of element 20 as being Appellants’ “casket



cap” notwithstanding, it is clear that Shanks simply has absolutely nothing to do with caskets, the field of endeavor to which Appellants’ invention is directed. One can hardly imagine combining a food storage compartment with a casket to produce anything useful, much less a sealable casket having a memorabilia compartment. As such, the Examiner’s rejection raises the specter of the rejection being based on hindsight, which is error as a matter of law.

The Federal Circuit has recently again strongly reaffirmed this cardinal principal of law. In re Dembiczak, 50 USPQ 2d 1614, 1717-1618 (Fed. Cir. 1999), the Court stated:

All the obviousness rejections affirmed by the Board resulted from a combination of prior art references, e.g., the conventional trash or yard bags, and the Holiday and Shapiro publications teaching the construction of decorated paper bags. *See Dembiczak*, slip op. at 6-7. To justify this combination, the Board simply stated that “the Holiday and Shapiro references would have suggested the application of . . . facial indicia to the prior art plastic trash bags.” *Id.* at 18-19. However, rather than pointing to specific information in Holiday or Shapiro that suggest the combination with the conventional bags, the Board instead described in detail the similarities between the Holiday and Shapiro references and the claimed invention, noting that one reference or the other -- in combination with each other and the conventional trash bags -- described all of the limitations of the pending claims. *See id.* at 18-28. Nowhere does the Board particularly identify any suggestion, teaching, or motivation to combine the children’s art references (Holiday and Shapiro) with the conventional trash or lawn bag references, nor does the Board make specific -- or even inferential -- findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper

obviousness analysis. See, e.g., *Pro-Mold & Tool*, 75 F. 3d at 1573, 37 USPQ2d at 1630.

To the contrary, the obviousness analysis in the Board's decision is limited to a discussion of the ways that the multiple prior art references can be combined to read on the claimed invention. For example, the Board finds that the Holiday bag reference depicts a "premanufactured orange" bag material, see *Dembiczak*, slip op. at 21, finds that Shapiro teaches the use of paper bags in various sizes, including "large", see *id.* at 22-23, and concludes that the substitution of orange plastic for the crepe paper of Holiday and the paper bags of Shapiro would be an obvious design choice, see *id.* at 24. Yet this reference-by-reference, limitation-by-limitation analysis fails to demonstrate how the Holiday and Shapiro references teach or suggest their combination with the conventional trash or lawn bags to yield the claimed invention. See *Rouffet*, 149 F.3d at 1357, 47 USPQ2d at 1459 (noting Board's failure to explain, when analyzing the prior art, "what specific understanding or technical principle . . . would have suggested the combination"). Because we do not discern any finding by the Board that there was a suggestion, teaching, or motivation to combine the prior art references cited against the pending claims, the Board's conclusion of obviousness, as a matter of law, cannot stand. See *C.R. Bard*, 157 F.3d at 1352, 48 USPQ2d at 1232; *Rouffet*, 149 F.3d at 1359, 47 USPQ2d at 1459; *Fritch*, 972 F.2d at 1265, 23 USPQ2d at 1783; *Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600; *Ashland Oil*, 776 F.2d at 297, 227 USPQ at 667.

The same holds true here. Rather than pointing to specific information in the references cited and applied against the claims that suggests their combination, the Examiner instead described in detail the similarities between those references and the claimed invention, noting that one reference or the other – in combination with each

other – described all the limitations of the pending claims. Nowhere did the Examiner particularly identify any suggestion, teaching or motivation to combine Shanks with any of the casket references; nor did the Examiner make specific – or even inferential – findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis. To the contrary, the Examiner’s obviousness analysis is limited to a discussion of the ways that the multiple prior art references can be combined to read on the claimed invention. This reference-by-reference, limitation-by-limitation analysis fails to demonstrate how Shanks teaches or suggests its combination with the casket references to yield the claimed invention. Since there is no finding by the Examiner that there was a suggestion, teaching or motivation to combine Shanks with the casket references cited against the claims, the Examiner’s conclusion of obviousness, as a matter of law, cannot stand.

### Issues 2 and 3

The error common to these issues is the Examiner’s combination of Shank, for a Sliding Shelf Structure, with, variously, Biondo et al for a Casket Having A Memorabilia Compartment, Estes for a Plural Casket Display and Saaf for a Burial Casket With Music Media Storage And Display. The claims involved in these issues, dependent claims 12-15, 17 and 26, all recite further separately patentable features of the construction of Appellants’ memorabilia compartment construction.

The Examiner cited Shank as disclosing:

a cabinet having a slideable drawer assembly wherein the drawer support is an open-ended C-shaped channel (36) having a drawer stop means at the flared rear end thereof and being mounted on each lateral side thereof via a pair of C-shaped brackets (12, 14) wherein each bracket includes a longer leg (16) and a shorter leg (26). The open-ended C-shaped channel (36) provides smooth, limited sliding engagement between the channel (36) and the drawer (46), while the brackets (12, 14) each having a longer leg (16) and a shorter leg (26) allows the brackets to be reversible side-to-side of the channel (36) and end-to-end of the bracket (12, 14). (emphasis added)

Initially, and notwithstanding the Examiner's assertions to the contrary, Shank discloses no such "cabinet," "slideable drawer assembly" or "drawer support." What Shank does disclose is a sliding shelf structure. Furthermore, like Shanks above, it is clear that Shank has absolutely nothing to do with caskets, the field of endeavor to which Appellants' invention is directed. As such, the Examiner's rejection again raises the specter of the rejection being based on hindsight, which is error as a matter of law.

Nowhere did the Examiner particularly identify any suggestion, teaching or motivation to combine Shank with any of the casket references, nor did the Examiner make specific -- or even inferential -- findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis. To the contrary, the Examiner's obviousness analysis is limited to a discussion of the ways that

the multiple prior art references can be combined to read on the claimed invention. This reference-by-reference, limitation-by-limitation analysis fails to demonstrate how Shank teaches or suggests its combination with the casket references to yield the claimed invention. Since there is no finding by the Examiner that there was a suggestion, teaching or motivation to combine Shank with the casket references cited against the claims, the Examiner's conclusion of obviousness, as a matter of law, cannot stand.

Issues 4, 5, 7 and 9

The error common to all of these issues is the Examiner's combination of Lee, for an Adjustable Cam Lock, with, variously, Biondo et al for a Casket Having A Memorabilia Compartment, Estes for a Plural Casket Display and Saaf for a Burial Casket With Music Media Storage And Display. These issues involve independent claim 28 and its dependent claims 29-31, as well as dependent claims 44 and 45, and 47, which depend from independent claims 43 and 46, respectively, discussed above. Claim 28 claims a casket comprising a shell, at least one cap engaging the shell, the cap including a header wall, the header wall being formed to include an access opening, a cover and a cam operable on an inside surface of the header wall which when actuated draws the cover toward the header wall. Dependent claims 29-31, 44, 45 and 47, all recite further separately patentable features of the construction of Appellants' memorabilia compartment construction.

The Examiner cited Lee as disclosing “a cabinet (2) and a sliding drawer (6) received therein wherein cam (3) is operable on an inside surface of cabinet wall (4) to draw the drawer thereto,” and as disclosing “a cabinet (2) and sliding drawer (6) received therein wherein a latching mechanism (44) is operable on an inside surface of cabinet wall (4) to draw the drawer thereto.” Initially, and notwithstanding the Examiner’s assertions to the contrary, Lee discloses no such “cabinet.” What Lee does disclose is an adjustable cam lock mounted on a desk. Furthermore, like Shanks and Shank above, it is clear that Lee has absolutely nothing to do with caskets, the field of endeavor to which Appellant’s invention is directed. As such, the Examiner’s rejection yet again raises the specter of its being based on hindsight, which is error as a matter of law.

Nowhere did the Examiner particularly identify any suggestion, teaching or motivation to combine Lee with any of the casket references, nor did the Examiner make specific – or even inferential – findings concerning the identification of the relevant art, the levels of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis. To the contrary, the Examiner’s obviousness analysis is limited to a discussion of the ways that the multiple prior art references can be combined to read on the claimed invention. This reference-by-reference, limitation-by-limitation analysis fails to demonstrate how Lee teaches or suggests its combination with the casket references to yield the claimed

invention. Since there is no finding by the Examiner that there was a suggestion, teaching or motivation to combine Lee with the casket references cited against the claims, the Examiner's conclusion of obviousness, as a matter of law, cannot stand.

Conclusion

For the foregoing reasons, it is submitted that the §103(a) rejections are in error. Reversal of the rejections is respectfully requested.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By: 

Wayne L. Jacobs  
Reg. No. 35,553

2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202  
Phone: (513) 241-2324  
Fax: (513) 421-7269

## APPENDIX

1. A sealable casket having a memorabilia compartment, said casket comprising:
  - a shell;
  - at least one cap pivoted to said shell;
  - said shell and at least one cap having respective confronting flanges;
  - a first gasket disposed between said flanges of said shell and at least one cap to seal therebetween;
  - a memorabilia compartment formed within said at least one cap and including an access opening and an interior;
  - a removable cover positioned over said access opening; and
  - a second gasket disposed between said cover and said at least one cap to seal therebetween.



2. The casket of claim 1 wherein said casket is a full top casket and said at least one cap is a single full length cap.

3. The casket of claim 1 wherein said casket is a cut top casket and said at least one cap is a pair of caps: a head end cap and a foot end cap.

4. The casket of claim 1 wherein said cover is a face plate of a drawer movably mounted in said at least one cap.

5. The casket of claim 3 wherein said cover is a face plate of a drawer movably mounted in one of said head end and foot end caps.

6. The casket of claim 3 further comprising a third gasket disposed between said head and foot end caps to seal therebetween.

7. The casket of claim 5 wherein said drawer is movably mounted in said foot end cap.

8. The casket of claim 7 wherein said foot end cap includes a header wall and wherein said access opening is formed in said header wall.

9. The casket of claim 8 wherein said drawer is movable into and out of said foot end cap through said access opening in said header wall.

10. The casket of claim 9 wherein said second gasket is positioned against an outside surface of said header wall around said access opening.

11. The casket of claim 10 further comprising a drawer support within said foot end cap and mounted from an inside surface of said header wall.

12. The casket of claim 11 wherein said drawer support is an open-ended generally C-shaped channel.

13. The casket of claim 12 wherein said channel is mounted from said inside surface of said header wall with a pair of brackets, one bracket of said pair being located on each lateral side of said channel.

14. The casket of claim 13 wherein each said bracket has a longer leg and a shorter leg, said longer leg being secured to said channel and said shorter leg being secured to said inside surface of said header wall.

15. The casket of claim 14 wherein each said bracket is generally C-shaped so as to be reversible side-to-side of said channel and end-to-end of said bracket.

17. The casket of claim 12 wherein said drawer is spring biased towards an outward position.

19. The casket of claim 10 further including a latch mechanism which latches said drawer in an inward position and compresses said second gasket between said face plate and header wall.

26. The casket of claim 12 further including at least one drawer stop operable between said channel and said drawer to prevent said drawer from being completely withdrawn from said channel.

28. A casket comprising:

a shell;

at least one cap engaging the shell;

the cap including a header wall;

the header wall being formed to include an access opening;

a cover; and

a cam operable on an inside surface of the header wall which when actuated draws the cover toward the header wall.

29. The casket of claim 28, wherein the cover is configured to cover the access opening when the cover is adjacent the header wall.

30. The casket of claim 29, further comprising a gasket disposed between the cover and the header wall.

31. The casket of claim 30, wherein the cover sealingly engages the gasket and the gasket sealingly engages the header wall at least after the cam draws the cover toward the header wall.

43. A casket comprising:

a shell;

at least one cap engaging the shell;

the cap including a header wall;

the header wall being formed to include an access opening;

a cover; and

a gasket disposed between the cover and the header wall.

44. The casket of claim 43, further comprising a latching mechanism configured to move the cover toward the header wall thereby compressing the gasket.

45. The casket of claim 44, further comprising a drawer received by the access opening and movably mounted in the cap, the cover being coupled to the drawer, and the latching mechanism being operable to draw the drawer into the cap.

46. A casket comprising:

a shell;

at least one cap engaging the shell;

a drawer carried by the cap for movement between an inward position and an outward position spaced-apart from the inward position;

a spring configured to yieldably bias the drawer away from the inward position; and

a gasket disposed between the drawer and the cap and configured to sealingly engage both of the drawer and the cap at least when the drawer is at the inward position.

47. The casket of claim 46, further comprising a latching mechanism operably coupled to the cap and to the drawer and operable to compress the gasket between the cap and the drawer.